U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34828900

Date: NOV. 20, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a golfer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim, and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination).

II. ANALYSIS

Because the Petitioner has not indicated or established his receipt of a major, internationally recognized award, he must satisfy at least three of the regulatory criteria. The Petitioner claims that he meets four of the regulatory criteria, namely that he had received a lesser nationally or internationally recognized award or prize, that he had membership in an association in the field in which classification is sought which requires outstanding achievements of their members, that there was published material about the Petitioner in professional, trade publications, or other major media, and that he has performed in a leading or critical role for a distinguished organization or establishment. 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), and (viii).

The Director determined that the Petitioner established that he has received a lesser nationally or internationally recognized award or prize and that he presented published material about himself but that he had not demonstrated membership in an association or that he had held a leading or critical role. Upon de novo review, we agree with the Director's determinations regarding the internationally recognized award, the published material, and the leading or critical role. However, we disagree with the Director that the Petitioner did not provide sufficient evidence to establish his membership in an association.

A leading or critical role for organizations or establishments that have a distinguished reputation

When adjudicating this requirement, USCIS first determines whether a petitioner has performed in a leading or critical role for an organization or establishment. 6 *USCIS Policy Manual* F.2(B), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. Second, USCIS determines whether the organization or establishment for which a petitioner holds (or held) a leading or critical role has a distinguished reputation. *Id.*

A leading role means that the person is (or was) a leader within the organization or establishment. *Id.* In contrast, a petitioner in a critical role "has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities." *Id.* A petitioner's role, rather than their title, determines whether their role is (or was) critical. *Id.*

The Petitioner claims this criterion based on having sponsorship deals with [redacted] and the [redacted] He avers that his role as a sponsored athlete has been "vital to their marketing and branding."

After reviewing the record, we agree with the Director that the Petitioner's role with these respective companies was not leading or critical to the respective organizations. In support of the criterion, the Petitioner presented several of his sponsorship contracts with the companies[1], an endorsement letter, a letter of support, and information on the companies. While these documents explain the Petitioner's contractual obligations and financial compensation to use the companies' products, the record does not sufficiently explain how the sponsorship deals marked him as a leader in the organizations or as making a significant contribution to them. For example, the Petitioner provided a letter of support from [redacted] an employee with the [redacted] The letter states that Mr. [redacted] chose the Petitioner to represent the brand and that he was an excellent ambassador. However, it neglects to establish how this role was leading or critical to the company.

Based on the record provided the Petitioner has not demonstrated that his role at these respective companies amounted to a leading or critical one. As such, he has not established the criterion.

Membership in associations in the field for which classification is sought that require outstanding achievement of their members, as judged by recognized national or international experts in their disciplines or fields

In order to meet this criterion, a petitioner must establish that they are or were a member of an association in their field of claimed extraordinary ability. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B). In addition, they must show that the association requires that their members have outstanding achievements, and that those achievements were judged to be outstanding by recognized national and international experts in their disciplines or fields. *Id.*

Here, the Petitioner claims eligibility for the criterion based on his membership in the PGA Tour Americas, PGA Tour Latinoamérica, and PGA Tour Canada. The Petitioner provided evidence of his membership and the 2024 Player Handbook and Tour Regulations for the PGA Tour Americas. The Handbook lists out the eligibility requirements for players. It states that in order to participate an individual must win or place in certain positions in the prior year's tournament or in various other qualifying competitions. Individuals can also qualify in certain situations if they are members of other specific tours, participate in an open qualifier with a handicap of two or less, or are invited by a tournament sponsor and have a handicap of zero strokes or less. The Petitioner provided a report showing that only the top five percent of U.S. golfers have a handicap of less than two. Given that an individual can only qualify for the association by certain rankings in selective competitive tournaments or a high degree of skill, the Petitioner has established the criterion.

As such, the Petitioner has established he meets three criteria and has satisfied part one of the two-step adjudicative process described in *Kazarian*. Accordingly, we will withdraw the Director's decision. As noted above, where a petitioner demonstrates that they meet these initial evidentiary

[1] One of the contracts originated after the filing of the petition. A petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(l), (12).

requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d at 1115, section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3). We will therefore remand the matter for the Director to make the final merits determination in the first instance.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.